

MAINE CENTER FOR DISEASE CONTROL AND PREVENTION

Chapter 286: MAINE WIC PROGRAM RULES

SUMMARY: These rules describe the procedures and standards that participants, local agencies and vendors must adhere to when they deal with the Maine WIC Program. These rules are designed to assure adequate participant convenience, as well as vendor and local agency compliance with Federal Regulations.

I. GENERAL

A. DEFINITIONS

As used in these rules, the following definitions shall apply:

1. "ACH" shall mean Automatic Clearing House for electronic funds transfer.
2. "Administrative hearing" shall mean a hearing conducted by the Department's Administrative Hearings Unit for any appellant adversely affected by a local or State Agency decision.
3. "Allocable costs" shall mean costs that are incurred specifically for the award, that benefit the award and other work, that can be distributed in reasonable proportion to the benefits received, and that are necessary to the overall operation of the organization.
4. "Appellant" shall mean a local agency, vendor, applicant or participant, or their parent or guardian, who is adversely affected by a local or State Agency decision and subsequently seeks review.
5. "Authorization" shall mean that there is a signed WIC vendor agreement, after meeting necessary Program criteria.
6. "Budget categories" shall mean Personnel, Equipment and All Other.
7. "Capital equipment" shall mean tangible property having a useful life of more than one year and an acquisition cost of three thousand (\$3000) dollars or more per unit.

8. "Certification" shall mean the use of standard criteria and procedures to assess and document each applicant's eligibility for the Program.
9. "Civil money penalty" shall mean a monetary fine levied against a vendor in lieu of disqualification, where allowed by law.
10. "Commissary" shall mean a store located on a military installation, available only to military personnel and their dependents.
11. "Compliance purchase" shall mean a purchase performed by non-participants to collect evidence of improper vendor practices and to verify vendor compliance with applicable laws, rules and regulations.
12. "Contract brand infant formula" shall mean all infant formulas (except exempt infant formulas) produced by the manufacturer awarded the infant formula cost containment contract.
13. "Contract modification" shall mean any changes made to Riders A, B, and C of the State of Maine Standard Agreement.
14. "Cost allocation" shall mean the distribution of sponsoring agency costs to its programs on the basis of statistical data that measure the relative amount of benefit received by the program.
15. "Days" shall mean calendar days.
16. "Department" shall mean the Maine Department of Health and Human Services.
17. "Direct costs" shall mean costs that can be identified with a particular program of the sponsoring agency.
18. "Disqualification" shall mean the act of ending Program participation, by either the State or local agency, whether as a sanction or for administrative reasons.
19. "Economic unit" shall mean a group that jointly pools its resources.
20. "Exempt infant formula" shall mean an infant formula that meets the requirements for an exempt infant formula under section 412(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 350a(h)) and the regulations at 21 CFR parts 106 and 107.

21. "Family" shall mean a group of related or unrelated individuals who are not residents of an institution but who are living together as one economic unit.
22. "FNS" shall mean the Food and Nutrition Service of the U. S. Department of Agriculture.
23. "Food instrument" shall mean voucher, check, draft, coupon, or other document used by a participant to obtain WIC foods.
24. "General administrative costs (indirect costs)" shall mean costs that cannot be readily identified with a particular program or service area.
25. "Hearing officer" means an impartial person within the Department of Health and Human Services (DHHS) Administrative Hearings Unit designated to conduct formal hearings and to render decisions pursuant to the regulations governing the Program.
26. "In-Kind" shall mean out of pocket or actual cash value of a necessary property or service(s) loaned or contributed to the local agency.
27. "Line items" shall mean entries within budget categories.
28. "Local agency" shall mean a public or private, non-profit health or human service agency that has contracted with the Department to provide WIC services.
29. "Non-contract brand infant formula" shall mean all infant formula, including exempt infant formula, that is not covered by an infant formula cost containment contract awarded by the State agency.
30. "Maximum Redemption Price" is the highest amount the State Agency will pay vendors for WIC authorized foods.
31. "OMB" shall mean the Office of Management and Budget.
32. "Participant" shall mean a pregnant woman, a postpartum breastfeeding or non-breastfeeding woman, an infant, or a child who is receiving food instruments from the Program, or the authorized representative of a pregnant, postpartum breastfeeding or non-breastfeeding woman, an infant or a child.
33. "Participant violation" means any intentional action of a participant, parent or caretaker of an infant or child participant, or proxy that violates federal

or state statutes, regulations, policies, or procedures governing the Program.

34. "Retail food delivery system" means a system in which WIC customers exchange a WIC food instrument for approved WIC foods at the location of an authorized vendor.
35. "Program" shall mean the Maine WIC Program.
36. "Restricted income" shall mean funds that are required by the funding source to be used to purchase certain goods or services or to pay for certain expenses. They may be in the form of grants or donations.
37. "State Agency" shall mean the State WIC Office of the Maine Department of Health and Human Services.
38. "Subcontract" shall mean services or any part of services purchased by the state agency pursuant to an agreement but not directly delivered by the local agency.
39. "Vendor" shall mean a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state agency to provide authorized supplemental foods to participants under a retail food delivery system.
40. "Vendor claim" shall mean a vendor violation that affects payment to the vendor resulting in an overpayment to the vendor.
41. "Vendor monitoring" shall mean the review of authorized vendors to determine adherence to Program rules.
42. "Vendor sanction" shall mean a warning letter, fine, disqualification or civil money penalty levied against vendors.
43. "Vendor selection criteria" means the criteria established by the WIC Program to select individual vendors for authorization consistent with the requirements in CFR 7 S246.12 (g)(3).
44. "Vendor training" shall mean educational sessions provided by either State or local agency staff to assure efficient and effective delivery of WIC services.
45. "Vendor violation" means any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the vendor agreement

or federal or state statutes, regulations, policies, or procedures governing the Program.

46. "WIC foods" shall mean those foods authorized by the Program for purchase by participants.
47. "WIC-eligible medical foods" shall mean certain enteral products that are specifically formulated to provide nutritional support for individuals with a diagnosed medical condition, when the use of conventional foods is precluded, restricted, or inadequate.
48. "WIC Food Vendor" means a store authorized to transact WIC food instruments for authorized WIC foods.
49. "WIC Pharmacy Vendor" means a pharmacy authorized only to transact WIC food instruments for formula and medical foods prescribed by a physician. A WIC Pharmacy Vendor is not authorized to operate as a WIC Food Vendor.
50. "A combination WIC Food Vendor and WIC Pharmacy Vendor" means a store authorized to transact WIC food instruments for authorized WIC foods and, formula and medical foods prescribed by a physician.
51. "Urban area" shall mean a community that has a population of 30,000 or more.
52. "Rural area" shall mean a community that has a population of less than 30,000.
53. "WIC Administrative Manual" shall mean a document containing the policies and procedures for administering the WIC program. Copies of the Manual are available by download at the WIC Program's web site, <http://www.maine.gov/dhhs/wic>. Printed copies of the Manual may be ordered at any local WIC office or by telephone at 1-800-437-9300 (in Maine), 207-287-3991 or TTY 207-287-8015.
54. "WIC Clinic Manual" shall mean a document containing the policies and procedures for certification and nutrition services in the WIC Program. Copies of the Manual are available by download at the WIC Program's web site, <http://www.maine.gov/dhhs/wic>. Printed copies of the Manual may be ordered at any local WIC office or by telephone at 1-800-437-9300 (in Maine), 207-287-3991 or TTY 207-287-8015.
55. "WIC Financial Manual" shall mean a document containing the policies and procedures for the financial management of the WIC Program. Copies

of the Manual are available by download at the WIC Program's web site, <http://www.maine.gov/dhhs/wic>. Printed copies of the Manual may be ordered at any local WIC office or by telephone at 1-800-437-9300 (in Maine), 207-287-3991 or TTY 207-287-8015.

56. "WIC Vendor Manual" shall mean a document containing the policies and procedures for the WIC Program's food delivery system. Copies of the Manual are available by download at the WIC Program's web site, <http://www.maine.gov/dhhs/wic>. Printed copies of the Manual may be ordered at any local WIC office or by telephone at 1-800-437-9300 (in Maine), 207-287-3991 or TTY 207-287-8015.

B. INCORPORATION OF FEDERAL REGULATIONS

These rules incorporate by reference the *Special Supplemental Food Program for Woman, Infants and Children* Regulations of the U.S. Department of Agriculture, Food and Nutrition Service, published in 7 C.F.R. Part 246, §§246.1-246.28 in effect at the time of the adoption of these *Maine WIC Program rules*, including the *Special Supplemental Nutrition Program for Women, Infants and Children: Vendor Cost Containment Interim Rule* published in the Federal Register on November 29, 2005 (Volume 70, Number 228) and effective December 29, 2005.

C. SEVERABILITY

The provisions of these Rules are severable. Should a court of competent jurisdiction declare any portion of these Rules *ultra vires* or unconstitutional, that ruling shall not affect the legality of any other provisions of these Rules.

II. PROGRAM ADMINISTRATION

A. FUNDING LOCAL AGENCIES

Each local agency's administrative and food funding allocation will be determined by a funding formula contained in the WIC Administrative Manual.

B. REVIEW AND MONITORING OF LOCAL AGENCIES

1. The State Agency will perform a management evaluation review of each local agency at least once biennially, and more frequently if the State Agency determines that such a review is necessary.
2. The local agency shall respond to management evaluation reviews within thirty (30) days from the date of the State Agency letter.

C. RETENTION OF RECORDS/REPORTS

1. The local agency shall maintain all reports and records for three years.
2. If any litigation, claim, negotiation, audit or other action involving any record or report is initiated prior to the end of the three year period, any such report or record must be retained until all issues are resolved or until the three year period has expired, whichever is later.

D. BLOOD ACCIDENT POLICIES

1. Local agencies shall comply with OSHA regulations 29 CFR § 1910.1030, Subtitle: Bloodborne Pathogens, Final Rule, December 6, 1991.
2. The local agency must maintain exposure records in accordance with OSHA regulations 29 CFR § 1910.1030-(f) (3).
3. In the event of an exposure incident, the State Agency will pay for HIV and HBV tests (for those not previously vaccinated for Hepatitis B) for both the source individual and the exposed WIC employee.
4. HIV tests shall be performed at anonymous test sites. If not feasible, alternative arrangements must be made with the State Agency.
5. Payment for HBV vaccinations is an allowable WIC expense for WIC Program employees who are required, as part of the job description, to perform hemoglobin testing.

E. CONFIDENTIALITY/RECORDS

1. Participant files must be secure. Only local agency staff and State and Federal officials with responsibility for the Program may have access to WIC Program files.
2. Written information in participant files or information stated verbally by participants or caretakers is confidential and may not be repeated or released to anyone other than the above stated personnel. Indiscriminate use is defined as information discussed in inappropriate places including, but not limited to, in front of other clients, in front of non-WIC local agency employees and outside of the local agency or clinic.
3. Release of medical information and requests for information must be authorized by the WIC participant. Procedures for the release of client information are established in the present edition of the WIC Clinic Manual.

4. Local agencies must have acceptable written policies stating the penalties for breach of participant confidentiality.

F. CERTIFICATION

1. Client applicants are placed on and removed from the waiting list according to the criteria established in the present edition of the WIC Clinic Manual.
2. Agencies maintaining both a telephone list and a waiting list of client applicants must provide services to people from the waiting list first.
3. Applicants who are living in institutions that serve meals (e.g. homes for unwed mothers) may be eligible for Program benefits if they meet the following provisions.
 - a. The institution does not gain financially from the person's participation in the Program.
 - b. The WIC foods are not used for communal feeding.
 - c. The institution does not act as a proxy for all Program participants allowing them to purchase the food quantities in bulk. This practice could lead to the use of WIC foods in a communal setting.
 - d. The institution does not place constraints on WIC participants' ability to use WIC foods and all associated WIC services made available to WIC participants.
4. Local agency staff must document how applicants pay for necessities in those cases where applicants state that they have no income.
5. A foster child for whom the State is legally responsible shall be considered a one-member family.
6. Persons from families on strike for at least two weeks shall be income eligible while on strike if the loss of income causes the average income for the past twelve (12) months to be less than Program limits.
7. At certification each applicant must present proof of residency, identity and income.
8. An applicant with no proof of identity and/or residency cannot be certified or issued food instruments except in situations where the applicant is a victim of theft, loss, or disaster; or a homeless individual; or a migrant.

G. FOOD INSTRUMENT ISSUANCE

1. Local agencies shall require participants to sign the food instrument register when food instruments are issued.
2. Replacement food instruments will not be issued for valid food instruments except when the local agency director authorizes replacement due to extenuating circumstances such as fire, flood or domestic violence.
3. Replacement food instruments may be denied if the participant loses food instruments twice within a certification period.
4. Local agencies may mail food instruments to participants according to situations and procedures established in the present edition of the WIC Clinic Manual.
5. Participants may designate a proxy to pick up and redeem food instruments according to the procedures established in the present edition of the WIC Clinic Manual. The proxy can also be allowed to act on the participant's behalf at follow-up nutrition education and re-certification appointments.

H. MISSED/LATE FOR APPOINTMENTS

1. The local agency shall send a notice to a participant who misses a scheduled appointment within fifteen (15) days of the missed appointment asking him/her to reschedule the appointment.
2. When appointments are missed and food instruments are picked up late, the local agency must prorate the food package according to guidelines established in the present edition of the WIC Clinic Manual.

I. PARTICIPANT VIOLATION

1. Local agencies shall investigate all reports of participant violations as quickly as possible.
2. Participant violations include but are not limited to:
 - a. Known and deliberate misrepresentation of circumstances to obtain benefits;

- b. Exchanging food instruments or supplemental foods for cash, credit, non-food items, or unauthorized food items, including foods in excess of those listed on the participant's food instrument;
 - c. Physically harming, or threatening to harm clinic or vendor staff; and
 - d. Dual participation.
- 3. A participant violation may result in disqualification from the Program for up to one (1) year. Sanctions for participant violations are based on criteria contained in the present edition of the WIC Administrative Manual.
 - 4. Local Agencies must notify the State Agency prior to the disqualification of a participant.
 - 5. Before disqualification from the Program the participant must be given full opportunity to appeal the disqualification as described in 7 CFR § 246.9.

J. TRAINING AND CONTINUING EDUCATION REQUIREMENTS FOR DIRECT SERVICE STAFF

- 1. All staff who take anthropometric measurements must complete refresher training at least once every two calendar years. Training can be provided by methods identified in the present edition of the WIC Clinic Manual. The local agency is responsible for maintaining records documenting the training type and dates for each employee.
- 2. All staff who perform blood tests must complete periodic refresher training at least once every two calendar years on the use of the hemoglobin testing equipment and procedure. Training can be provided by methods identified in the present edition of the WIC Clinic Manual. The local agency is responsible for maintaining records documenting the training type and dates for each employee.
- 3. The local agency is responsible for providing annual training on bloodborne pathogens and universal precautions to all staff who are required to perform hemoglobin testing as a part of their job description. Training and documentation must follow guidelines set forth in OSHA Standard 29 CFR § 1910.1030-(g) (2), as amended from time to time.
- 4. Continuing education requirements for licensed dietitians and dietetic technicians are the same as those set for them by the State Board of Licensing of Dietetic Practice and must include a minimum of four hours per calendar year of breastfeeding training.

5. Dietitians/nutritionists who are not licensed must receive at least fifteen (15) hours of continuing education per calendar year, of which a minimum of four hours must be training in breastfeeding. Four of the fifteen (15) hours must be successive in a program that has an evaluation component and where there are at least fifteen (15) people in attendance.
6. WIC staff members who are not included in 4 and 5 above must attend at least ten (10) hours of continuing education per calendar year, of which a minimum of two hours must be training in breastfeeding. Four of the ten (10) hours must be successive in a program that has an evaluation component and where there are at least fifteen (15) people in attendance.
7. Local agencies must ensure that training and continuing education requirements for nutrition staff are documented and complete.
8. Each local agency must designate a Breastfeeding Coordinator who is responsible for planning, evaluating and monitoring breastfeeding promotion and support activities.

K. HEMATOLOGICAL

1. Hematological tests for anemia must follow the periodicity table described in the present edition of the WIC Clinic Manual.
2. Blood test data may be obtained from referral sources at the time of certification or within 90 days of the date of certification.
3. Only local agency personnel who have completed training in bloodborne pathogens, universal precautions and testing equipment protocol may perform blood tests.
4. Personnel performing blood testing must follow procedures established in the present edition of the WIC Clinic Manual.
5. A participant may refuse to provide blood work for sincere religious or philosophical reasons. Such a refusal must be documented in the participant's file, and is confidential.

L. ANTHROPOMETRIC RISK ASSESSMENT

1. At a minimum, height and weight measurements must be performed and/or documented in the applicant's file at the time of certification. Weight, height or length shall be measured not more than sixty (60) days prior to certification for program participation.

2. At a minimum, pregnant women shall be weighed a) at certification, b) between 20-24 weeks gestation and c) between 35-40 weeks gestation.
3. Infants certified to their first birthday shall have an anthropometric assessment completed at least 3 times during the certification period. (excluding birth measurements)
4. Infants and children must be weighed and measured according to the procedure established in the present edition of the WIC Clinic Manual.

M. MEDICAL AND NUTRITION RISK ASSESSMENT

1. Medical and health information is collected and assessed according to the procedures established in the present edition of the WIC Clinic Manual.

N. FOOD PACKAGES

1. Approved WIC foods and maximum quantities are limited to those allowed by Federal Regulations (7 CFR §246.10) and those which meet the State Agency's criteria, as set forth in the present edition of the WIC Administrative Manual.
2. Formula fed infants shall receive the contract brand cow's milk or soy-based infant formula.
3. According to Federal Regulations 7 CFR § 246.10, exempt and non-contract infant formulas, and WIC-eligible medical foods may be provided with medical documentation by a licensed health care professional authorized to write medical prescriptions under State law. The prescription must include the name of the product, the amount prescribed per day, the duration of the prescription, the ICD-9-CM diagnosis code and the signature of the requesting health care professional.
4. Low iron standard infant formula may only be provided to infants with the following diagnoses:
 - a. iron overload secondary to chronic blood transfusions in chronic hemolytic anemia;
 - b. hereditary spherocytosis;
 - c. thalassemia;
 - d. chronic aplastic anemia;

- e. sickle cell disease; or
- f. hemoglobin E.

O. NUTRITION EDUCATION

- 1. Nutrition education shall be provided to all participants and the parent/caretaker of child participants as established in the present edition of the WIC Clinic Manual.

P. MISCELLANEOUS

- 1. All materials regarding the WIC program that are produced by the local agency must include the U.S. Department of Agriculture's (USDA) nondiscrimination statement according to the most recent USDA Departmental Regulation (WIC Program Final Policy Memorandum #2006-3)
- 2. Each local agency shall complete an annual time study in a format designed or approved by the State Agency. The time study will be used to demonstrate that the expenditure requirement for nutrition education and breastfeeding support has been met. The results of the time study must be reported to the State Agency within two weeks of its completion.
- 3. The local agency shall provide interpretive services at no charge to any WIC applicant or participant who requires such services.

Q. REFERRALS

- 1. Local agencies must provide WIC program participants or their designated proxies with information on other health-related and public assistance programs. Local agency staff shall refer participants to such programs as necessary and provide appropriate follow-up.

III. FINANCIAL

A. NEW APPLICATIONS

- 1. A community agency requesting approval as a WIC local agency must submit a written application in a format prescribed by the State Agency.
- 2. The State Agency must provide written notification of incomplete applications to an applicant agency within fifteen (15) days of receipt of the application.

3. The State Agency shall notify the applicant agency in writing of the approval or disapproval of the application within thirty (30) days of the receipt of a complete application.
4. The State Agency shall provide the applicant agency with the reason(s) for disapproval of the application and advise the agency of the right to appeal.
5. When funds are not available for Program initiation or expansion, the State Agency shall return the application to the applicant agency within thirty (30) days and maintain a record of the name and address of those agencies that have applied. The State Agency will notify the applicant agency when funds become available.
6. Local agencies shall be selected and funded in accordance with the priority system defined at 7 CFR §246.5(d) (1) of the WIC Program Federal Regulations.

B. AGREEMENTS

1. A local agency must submit one copy of the draft agreement to the State Agency in the format defined in the present edition of the WIC Financial Manual and according to deadlines defined by the State Agency.
2. A local agency must submit one (1) copy of the final agreement to the State Agency in the format defined in the present edition of the WIC Financial Manual and according to deadlines defined by the State Agency.
3. Improperly submitted final agreements shall be returned to the local agency by the State Agency, except that, in the sole discretion of the State Agency, corrections may be negotiated by telephone and made by facsimile.
4. The State Agency reserves the right to refuse any and all agreements.
5. Local agencies are responsible for the fulfillment of all terms of agreements and subcontracts.
6. Any expenses incurred prior to the signing of the final agreement by all parties or after the expiration or termination of the agreement are not allowable and will not be reimbursed.
7. All copies of the final agreement must be submitted properly dated and signed with original signatures.

8. Any agreement received by the State Agency after the prescribed deadlines may be subject to a funding penalty.
9. The local agency will keep a copy of the final agreement on file at its office.

C. AGREEMENT MODIFICATIONS

1. Requests for agreement modifications must be made in writing to the State Agency at least six (6) weeks prior to the termination date of the agreement.
2. Agreement modifications of Rider B require a formal, written amendment approved by the State Agency and signed by all necessary parties.
3. Agreement modifications of Riders A and C may be accomplished either by a formal, written amendment or by a letter of approval from the State Agency.
4. Changes in the budget must be made through the agreement modification process prior to the termination or expiration of the agreement.

D. BUDGETARY REQUIREMENTS

1. Local agencies shall keep the Uniform Federal Assistance Regulations (7 CFR Part 3015) and the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (7 CFR Part 3016), and OMB circulars (A- 87, A-122, A-102, A-110, A-128, A-133), and WIC Program Policies and Procedures Manuals and shall adhere to all of the cost principles and provisions contained therein.
2. Restricted income must be applied against expenses for which the funds are restricted. These expenses are not subject to payment by WIC Program funds.
3. Unrestricted income received by a local agency may be used as seen fit by the local agency, provided the following criteria are met:
 - a. The funds are not previously described in the budget;
 - b. The WIC Program does not participate in the costs, including indirect costs, of producing such funds; and
 - c. The agency Board of Directors has established how the funds will be used.

4. The State Agency shall determine allowable local agency administrative expenditures based upon the principle of cost sharing.
5. Local agencies may not claim a percentage of surplus funds prior to redistributing funds through cost sharing.
6. Local agency budgets must include all Program direct and indirect costs.
7. Reimbursement for mileage cannot exceed the state allowance. Meals and lodging shall be determined by local agency policy. If no local agency policy exists, State laws, rules and policy must be followed.
8. No local agency staff may travel out-of-state for local agency purposes without prior approval from the State Agency, unless specifically provided for in the final agreement.
9. Local agencies must maintain records necessary to document client certifications, provision of services to clients, food instrument issuance and redemption, nutrition education and formal hearing requests.
10. In the event the local agency experiences under delivery of 20 percent or more of service (food dollar expenditure) or under expenditure of 20 percent or more of administrative funds during the prior three-month period the State Agency may initiate an agreement modification.
11. The State Agency will not reimburse local agencies for expenditures in excess of the total agreement amount.
12. Prior approval is required from the State Agency and as necessary from the Food & Nutrition Services for the purchase of capital equipment not originally approved in the agreement.
13. Prior approval is required from the State Agency and FNS for any capital equipment costs exceeding three thousand (\$3000) per item.
14. The purchase of any automated data processing equipment, regardless of price, must have prior approval from the State Agency and from FNS.
15. When assets acquired with local agency funds are sold, no longer useable or used for purposes not authorized by the State Agency, the State Agency's equity in the asset shall be refunded in the same proportion as its participation in its costs. If assets are traded for new items, only the net cost of the newly acquired asset is an allowable expense.

16. All equipment purchased with Program funds shall be the property of the WIC Program and shall remain so upon termination or expiration of the agreement.
17. Each local agency shall maintain property records for all capital equipment purchased with WIC funds.
18. Upon termination or expiration of the agreement, and prior to an audit by the State Agency, the State Agency will send a notice to the local agency of Program revenues received by the local agency that are in excess of allowable expenses. The local agency must return the excess revenue to the State Agency within thirty (30) days of said notification. Untimely payments will be deducted from the current fiscal year grant.
19. At least 20 percent of the administrative funds expended by each local agency for administrative costs shall be used for nutrition education activities.
20. Failure to expend the required amount of the administrative funds on nutrition education shall automatically create a lien against the local agency for the difference between the reported expenses and the required amount of the administrative expenditures.
21. Local agencies are required to revise or amend their budgets as established in the present edition of the WIC Financial Manual. All modifications must be made prior to the termination or expiration of the agreement.
22. Reimbursement of expenses is limited to allowable expenses as defined in OMB circulars and established in the present edition of the WIC Administrative Manual.
23. Any costs allocable to a particular funding agreement may not be deferred or transferred to another funding agreement in order to overcome funding deficiencies or to avoid restrictions imposed by the agreement.
24. The State Agency may not reimburse local agencies for unreported expenditures later than one year after the end of the fiscal year in which said expenses occurred. FNS has final authority in authorizing payment.

E. PAYMENT AND REPORTING

1. The Department will advance the administrative payment for the first month of the fiscal year to each local agency. The advance shall equal one twelfth of the local agency's annual administrative budget. The invoice for

the first advance must be submitted to the State Agency on or before October 1.

2. Payments for subsequent months will be based on the previous month's actual expenses as reported to the State Agency; invoices for those payments must be submitted to the State Agency by the 24th of the month following the report month.
3. Monthly reports (food and administrative) in a format determined by the State Agency must be received by the State Agency on or before the 24th of the month following the report month.
4. The State Agency will not process local agency invoices when reports are not submitted according to schedule.
5. Two monthly financial reports and two monthly nutrition education reports in a format determined by the State Agency must be submitted by the local agency for the months of October and November and, if necessary, December.
6. Accruals not reported on the September report will not be allowable.
7. Each local agency must maintain file documentation for cost breakdowns of nutrition education expenses, which include breastfeeding support and promotion expenses.
8. All accruals incurred as of September 30th for the preceding federal fiscal year must be liquidated no later than December 31 of that year.
9. Local agencies must report expenditures/obligations for the fiscal year in which they occur.
10. Monthly food income and expenditures must be documented in the local agency's accounting records.

F. AUDITS

Local agency audits will be performed by the State Agency in accordance with the requirements contained in the General Accounting Office generally accepted auditing standards, applicable Program guidelines and regulations, terms and conditions of the agreement, and applicable OMB circulars. Local agencies are also subject to audit by authorized representatives of the federal government.

IV. VENDOR

A. APPLICATION FOR AUTHORIZATION & VENDOR SELECTION CRITERIA

1. A vendor interested in participating in the WIC Program must complete a Vendor Application in accordance with the procedures outlined in the Vendor Manual in effect at the time of application.
2. The State Agency will accept applications for authorization as a WIC vendor on an ongoing basis.
3. Incomplete applications will be returned to the vendor and may delay authorization.
4. In order for a vendor's application to be considered by the State Agency, the vendor must comply with the criteria listed in the Vendor Manual in effect at the time of application, including, but not limited to:
 - a. The vendor must have a minimum supply of WIC foods as defined in the Vendor Manual in effect at the time of application and the foods may not be out of date
 - b. The vendor applicant must possess a valid Food Establishment License from the Maine Department of Agriculture, Food and Rural Resources (or its equivalent from another state) or must be a Registered Pharmacy through the Maine Commission of Pharmacies (or its equivalent from another state).
 - c. The food vendor and food/pharmacy vendor applicant's store must include at least 1,000 square feet of space devoted to the sale of grocery items unless denial for this reason would result in inadequate participant access.
 - d. The food vendor and food/pharmacy vendor applicant must be currently enrolled as an authorized vendor in the Food Stamp Program.
 - e. The vendor must be authorized to receive an ACH credit (direct deposit). The vendor must provide the State Agency a valid bank name, routing and account numbers.
 - f. The food vendor applicant may not expect to derive more than 50% of annual food sales revenue from WIC food instruments.

- g. Applications for authorization as a WIC pharmacy vendor will be considered only if the State Agency determines that a need exists in the geographical area where the pharmacy applicant is located.
- 5. The State Agency has the right to refuse applications from new owners of stores previously disqualified from the Program or any other FNS Program if the State Agency has reason to believe that a bona fide arms length sale has not taken place.
- 6. Unless denying authorization of a vendor applicant would result in inadequate participant access, the State Agency may not authorize a vendor applicant that is currently disqualified from the Food Stamp Program or that has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that would otherwise have been imposed has not expired.
- 7. The competitive pricing structure for the Maine WIC Nutrition Program is based on peer groups as defined in the Vendor Manual in effect at the time the vendor's application is reviewed. The vendor applicant's pricing must be competitive when compared to that of his/her peer's.
- 8. A vendor applicant must be an established business, open to the public for at least one year in the current location. This condition can be waived by the State Agency for a current vendor in good standing that is adding an additional location.
- 9. U.S. military commissaries are exempt from the selection criteria.
- 10. The State Agency will consider business integrity as established in 7 CFR§ 246.12 (3) (iii) of the WIC Federal Regulations.

B. VENDOR AUTHORIZATION

- 1. If all required information meets the selection criteria and the application is approved, the State Agency will notify the vendor within thirty (30) days from the date the completed Vendor Application is received.
- 2. The State Agency will conduct an on-site visit to verify that the information provided on the application is accurate. This visit can occur at any time during the application process.
- 3. If selected for authorization, each vendor (including each selected chain outlet) must participate in an approved form of training as defined in the Vendor Manual in effect at the time of application. Failure to participate in the training will result in denial of the vendor application.

4. If a vendor applicant provides or furnishes false information in connection with an application for authorization, the State Agency shall deny authorization for a period of twelve (12) months.

C. REVIEW OF QUALIFICATIONS

1. The State Agency may review each participating vendor's qualifications to be an authorized vendor at any time and as often as it deems necessary during the vendor's contract period.
2. If a current vendor provides or furnishes false information in connection with an application for authorization, the State Agency will terminate authorization for a period of twelve (12) months.
3. In order to remain authorized, each vendor must maintain compliance with all of the vendor requirements of the WIC Program as defined in the Vendor Manual in effect at the time of the review.
4. A current vendor will receive an application for renewal of authorization thirty (30) days before the agreement expires. The vendor must comply with application procedures as defined in the Vendor Manual in effect at the time of contract expiration.

D. VENDOR STAMPS

1. One (1) vendor stamp will be provided to all WIC vendors at no charge except for self inking stamps which can be provided upon request for a fee.
2. The vendor stamp is invalid upon disqualification or voluntary withdrawal of the vendor from the Program.
3. Vendors may not duplicate vendor stamps.

E. VENDOR TRAINING

1. A Vendor and a Vendor applicant must participate in training on Program requirements and procedures as defined in the Vendor Manual in effect at the time the Vendor is selected for training.

F. VENDOR MONITORING

1. The State Agency shall be responsible for vendor monitoring.

2. During each fiscal year, at least five (5) percent of all the authorized vendors (excluding high-risk vendors) will be monitored.
3. Compliance investigations will be conducted on all high-risk vendors as defined in the Vendor Manual in effect at the time of the investigation. During each fiscal year, the State Agency will conduct compliance investigations of a minimum of five (5) percent of the number of vendors authorized.. The remainder of the required compliance investigations will be conducted on non high-risk vendors, selected in a manner determined by the State Agency.

G. VENDOR NON-COMPLIANCE

1. The Maine WIC Nutrition Program may initiate administrative action to disqualify or assess a fine against a vendor for non-compliance on the basis of one incidence of a violation or a pattern of violations. An incident is defined as one isolated event in a single point in time or any single occurrence of a violation. A pattern is defined as two or more incidences of a violation.
2. Mandatory sanctions are federal penalties as defined in the Vendor Manual in effect at the time of the violation and shall constitute grounds for disqualification from the WIC Program for a minimum of one (1) year and up to permanent disqualification.
3. State sanctions are penalties defined in the Vendor Manual in effect at the time of violation and shall constitute grounds for one or more of the following: disqualification from the WIC Program; assessment of vendor fines; mandated training and submission of corrective action plans. State sanctions will not be added to a mandatory sanction within the same investigation unless a mandatory sanction from the same investigation is not upheld on appeal.
4. Notwithstanding the imposition of any mandatory or state sanctions, a WIC vendor who violates any of these rules, or program requirements as set forth in the Vendor Manual, is also subject to potential reciprocal Food Stamp Program sanctions, and potential disqualification as a consequence of engaging in conduct which resulted in sanctions imposed by the New Hampshire WIC Program.

H. WARNING LETTERS

1. The Maine WIC Program shall provide written notice to a vendor determined to have engaged in conduct which constitutes the initial act of

a pattern of conduct subject to sanctions, unless such notification would compromise the integrity of a pending Departmental investigation.

I. PROSECUTION AND FINES

1. A vendor committing fraud or abuse of the WIC Program is liable to prosecution under applicable federal, state or local laws.

J. CIVIL MONEY PENALTY

1. In the event that the State Agency determines that disqualification of a vendor would result in inadequate participant access and the Maine WIC Program does not authorize a new WIC vendor(s) or otherwise devise a plan to meet participant access needs, the State Agency shall impose a civil monetary penalty in lieu of disqualification where allowed by law.
2. The method used to calculate the civil money penalty, limits of the penalty and payment options available to the vendor are as defined in the Vendor Manual in effect at the time the penalty is imposed.

K. PARTICIPANT ACCESS DETERMINATION

1. In order to determine inadequate participant access, the State Agency will consider several factors that include, but are not limited to the following:
 - a. A WIC participant would be required to travel more than ten (10) miles one way from the disqualified vendor to the nearest authorized WIC vendor;
 - b. The presence of physical barriers or conditions that would make normal travel to another authorized vendor difficult or impossible (for example, an island store, poor road conditions).
2. Such a determination is in the sole discretion of the State Agency and is not subject to appeal (7 CFR §246.18).

L. REJECTION OF FOOD INSTRUMENTS

1. Food instruments will be rejected by the WIC fiscal intermediary and returned to the vendor's depository bank for the following reasons:
 - a. Missing or unreadable vendor stamp.
 - b. Food instrument exceeds the Maximum Redemption Price.
 - c. Early cashing (before the first date of use);

- d. Late cashing (after the last date of use);
- e. No participant signature on the signature line of the food instrument;
- f. Previously presented for payment and consequently rejected (except for being rejected due to missing an Authorized Vendor Stamp);
- g. Obvious alterations; and
- h. Unauthorized vendor stamp.

M. REIMBURSEMENT OF REJECTED FOOD INSTRUMENTS

1. The State Agency has the right to reduce or deny payment of food instruments cashed in violation of WIC rules and regulations or as defined in the WIC Vendor Manual in effect at the time the ACH credit was incurred. The State Agency may approve an ACH credit for a food instrument rejected by the bank for the following reasons:
 - a. Unreadable or missing vendor stamp;
 - b. Exceeds the Maximum Redemption Price. An ACH credit will automatically be applied to the vendor's bank account following the procedure in the WIC Vendor Manual in effect at the time the food instrument was rejected;
 - c. Bank error; and
 - d. WIC Program error.
2. The State Agency shall not reimburse a vendor for food instruments rejected for the following reasons:
 - a. Food instruments cashed early (before the first date of use);
 - b. Food instruments cashed late (after the last date to use);
 - c. Food instruments missing a signature;
 - d. Food instruments accepted by unauthorized vendors; and
 - e. Food instruments which bear apparent signs of alteration

N. VENDOR AGREEMENTS

1. If selected for authorization, each vendor must sign a Vendor Agreement with the State Agency.
2. A State Agency-Corporate Agreement (chain stores) covering all outlets of the chain selected will be signed by the chain store's corporate office and the State Agency.
3. A contract between the State Agency and an authorized vendor will not exceed three (3) years.
4. The State Agency reserves the right to unilaterally amend vendor agreements at any time to accommodate changes in the food delivery system.
5. Either party may terminate the agreement, without cause, effective upon receipt of written notice.
6. In the event a vendor ceases operation or majority ownership of the store changes, the agreement is automatically terminated beginning on the day the store closed or ownership changed.
7. Special written exception may be issued by the State Agency on a case-by-case basis for the stocking requirements.
8. A WIC pharmacy vendor or a WIC food/pharmacy vendor must ensure that formula authorized by the WIC Program and requested by a WIC participant or the WIC Program can be available within 72 hours of the request.
9. A WIC pharmacy vendor can accept food instruments for authorized infant formula and/or WIC -eligible medical foods only.
10. A WIC food vendor that has not been authorized as a WIC pharmacy vendor cannot accept food instruments for prescription infant formula and/or WIC-eligible medical foods.

O. REDEMPTION OF FOOD INSTRUMENTS

1. The vendor is solely responsible for ensuring the validity of food instruments by abiding by the following criteria:

- a. The current date is within the use dates specified on the face of the food instruments;
 - b. The signature is affixed at the time of the purchase and it matches either of the signatures on the ID Folder;
 - c. No visible alterations are apparent on the food instruments (e.g., food quantities, participant ID number).
2. When accepting a food instrument, the vendor is solely responsible for ensuring that proper transaction procedures are followed. Transaction procedures are as defined in the Vendor Manual in effect at the time of the redemption.

V. APPEALS

A. APPLICANT, PARTICIPANT OR VENDOR APPEALS

1. Any applicant, participant or vendor adversely affected by a local or State Agency decision has the right to a formal hearing in only the following instances:
 - a. Participant
 - i. Denial of participation at certification or recertification;
 - ii. Disqualification from the Program during the certification period; and
 - iii. Placement on a waiting list.
 - b. Vendor
 - i. Denial of authorization;
 - ii. Disqualification from the Program during the contract period; and
 - iii. Denial of vendor claims.
2. Administrative hearings will be conducted in accordance with the rules contained in the WIC Federal Regulations 7 CFR §246.18 and Department of Health and Human Services Administrative Hearing Regulations, 10-144 CMR Chapter 1.

3. Any participant or vendor adversely affected by a local or State Agency decision shall be informed in writing at least fifteen (15) days prior to the effective date of the action, of the reasons for the action and of the right to a fair hearing.
4. Any applicant found ineligible for the Program or placed on the waiting list shall be immediately informed in writing of the action, of the reasons for the action and of the right to a fair hearing.
5. A request for an administrative hearing is defined as a written or verbal statement by an applicant, participant or vendor requesting the opportunity to present his/her case to a higher authority.
6. Requests for an administrative hearing must be made within sixty (60) days from the date of the written notice of the adverse action.
7. Requests received by local agencies shall be forwarded to the State Agency within three (3) working days of receipt.
8. The Department shall not deny or dismiss a request for an administrative hearing unless:
 - a. The request is not received within the time limits set by the Department;
 - b. The request is withdrawn in writing by the appellant or representative;
 - c. The appellant or representative fails, without good cause, to appear at the scheduled hearing; or
 - d. The appellant is not entitled to a hearing as set forth above.
9. Applicants or participants who are denied benefits at initial certification or at subsequent certifications may appeal the denial but shall not receive benefits while awaiting the hearing.
10. Participants who request an administrative hearing as a result of the termination of benefits during a certification period and within the fifteen (15) days advance adverse notice period shall continue to receive Program benefits until a decision is reached or the certification period expires, whichever comes first.

11. Adverse actions against a vendor shall be postponed until an administrative hearing decision is reached, unless otherwise required by law.
12. Administrative hearing dates will be scheduled to take into consideration the convenience of the appellant, both in terms of time and location.
13. The appellant is solely responsible for the cost of his or her legal counsel.
14. The State Agency shall immediately forward any request for withdrawal of an administrative hearing to the Hearing Officer.
15. An administrative hearing may not be delayed or canceled for the purpose of considering a possible adjustment unless the appellant requests such a delay or cancellation.
16. The appellant shall be provided with adequate opportunity to examine all records and documents to be presented at the administrative hearing, at any time after a request for a hearing has been made.
17. Any representative of the appellant must have written authorization from the appellant to examine such records.
18. All administrative hearings will be conducted in accordance with the rules contained in the Department of Health and Human Services Administrative Hearings Regulations 10-144 CMR Chapter 1.
19. All administrative hearing decisions will be issued in accordance with the rules contained in the Department of Health and Human Services Administrative Hearings Regulations 10-144 CMR Chapter 1.
20. If the administrative hearing decision is in favor of the appellant, and benefits were denied or discontinued, benefits shall begin once a decision is made.
21. If the decision is not in favor of the appellant, continued benefits or participation shall be terminated as soon as administratively feasible as decided by the Hearing Officer. An appellant may appeal an unfavorable decision to Superior Court pursuant to M.R.Civ.P.80C. However, unless otherwise ordered by the Superior Court, the Hearing Officer's decision shall not be stayed, and benefits or participation shall continue to cease.

B. LOCAL AGENCY APPEALS

1. Any local agency adversely affected by a State Agency decision has the right to appeal certain Department decisions.
2. The expiration of a local agency's agreement is not subject to administrative appeal.
3. When the decision relates to an agreement dispute, the following standards shall apply:
 - a. The local agency must submit a written or oral request for a review to the State Agency. Said request must be received by the State Agency within thirty (30) calendar days from the date of the State Agency's decision letter;
 - b. The review shall be conducted by the Director, Maine Center for Disease Control and Prevention or a designee;
 - c. The Director shall notify the local agency of the decision, in writing, within five (5) calendar days of the review. The decision shall include findings of fact regarding the agreement dispute; and
 - d. The decision of the Director shall represent the final decision of the Department and may be appealed to Superior Court pursuant to M.R.Civ.P.80C.
4. When the decision relates to the non-renewal of an agreement or the denial of an initial application, the following standards shall apply:
 - a. When the Department has determined that it will not approve an initial application or negotiate a renewal of a local agency's agreement, the Department shall notify the local agency of the decision in writing and of the agency's right to a review by the Department.
 - b. If a written or verbal request for such is postmarked within thirty (30) days of the date of the State Agency's notification letter, the Director, Maine Center for Disease Control and Prevention, will conduct an informal conference within ten (10) days of the request. The Director will issue a written decision within five (5) calendar days of the conference.
 - c. If the local agency is dissatisfied with the Director's decision, the local agency may request a formal hearing with the Department's Administrative Hearing Unit. The local agency must request the formal hearing within ten (10) calendar days of the informal review

decision by making a written or oral request to the Commissioner, Department of Health and Human Services, or the WIC State Agency. A formal hearing will be conducted pursuant to 10-144 CMR Chapter 1.

5. When the decision relates to the termination of an agreement, the following standards shall apply:
 - a. When the Department notifies a local agency, in writing, of its decision to terminate an agreement, the local agency may request a decision review within ten (10) calendar days from the date of the State Agency's notification letter, by making a written or oral request to the Director, Maine Center for Disease Control and Prevention.
 - b. The Department shall provide at least sixty (60) days notice of its decision to terminate the agreement.
 - c. If a timely request was made, the Maine Center for Disease Control and Prevention Director, or a designee will conduct an informal conference within ten (10) calendar days of the request. The Director will issue a written decision within five (5) calendar days of the conference.
 - d. If the local agency is dissatisfied with the Director's decision, the local agency may request a formal hearing with the Department's Administrative Hearings Unit within ten (10) calendar days from the date of the Director's decision letter. The Department shall continue funding the agency until a hearing decision is reached. A formal hearing will be conducted pursuant to 10-144 CMR Chapter 1.
6. When the decision relates to the appeal of an audit, the following standards shall apply:
 - a. A local agency dissatisfied with the results of a Department conducted fiscal audit shall have the right to an informal conference review by the Department if a written request for such is received within (30) calendar days of the date of the final audit report.
 - b. The Maine Center for Disease Control and Prevention shall, within thirty (30) calendar days of receipt, acknowledge, in writing, a request for an informal review providing the appellant with the date, time and place of the review.

- c. In the event the Maine Center for Disease Control and Prevention requests additional agency information, the local agency shall submit such information to the Maine Center for Disease Control and Prevention within thirty (30) calendar days in order to be considered. No final decision shall be rendered until the information is received, or the time period for submission has elapsed.
- d. The Maine Center for Disease Control and Prevention shall notify the appellant, in writing, within thirty (30) calendar days of the informal conference or the elapsed period for submission of additional information of the decision rendered by the State Agency.
- e. If the appellant is dissatisfied with the Maine Center for Disease Control and Prevention's decision, the appellant shall have the right to request a formal hearing with the Department's Administrative Hearings Unit within (10) calendar days of receipt by making a written request to the WIC State Agency.
- f. If the final decision requires the local agency to return funds to the Department, the local agency shall return such funds within thirty (30) calendar days of the date of the decision letter unless an alternate payment has been approved by the State Agency.
- g. If the funds are not returned within thirty (30) calendar days or an alternate payment has not been approved, the Director, Maine Center for Disease Control and Prevention shall have the right to reduce the local agency's current allocation of Maine Center for Disease Control and Prevention funds.

STATUTORY AUTHORITY: 22 M.R.S.A. §§ 42 and 1951

EFFECTIVE DATE:

November 30, 1985

AMENDED:

November 5, 1986

REPEALED & REPLACED:

December 9, 1989

AMENDED:

December 8, 1991

December 7, 1993

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 5, 1996

AMENDED:

June 27, 2001

NON-SUBSTANTIVE CORRECTIONS:

May 11, 2004 - minor punctuation and spelling

AMENDED:

May 26, 2004 - filing 2004-164

NON-SUBSTANTIVE CORRECTIONS:

June 7, 2004